

From: Phil
To: downey_magallanes@ios.doi.gov
Subject: Recapture canyon road
Date: Tuesday, October 24, 2017 7:27:53 PM
Attachments: [Right of Way U-42412 \(2\).pdf](#)
[image001.png](#)
[image002.png](#)

Hi Downey,

I have not wanted to cloud the water with the Recapture road issue in hopes that there is a Bears Ears announcement forthcoming, but since the 10th Circuit has made their decision on my appeal I thought this has gone on long enough and wanted to get some more information to you. It is frustrating because it all hinges on the existence of a county road, the best documentation of which is the BLM's own ROW records where they call it an R.S. 2477 road and a county road, and where they restrict the Water Conservancy District to use only the "existing access", i.e. the county road. Now the local BLM is trying to say that there is only a Title V road in recapture and that it is only for the pipeline maintenance. It is a false report which has cost me several hundred thousand dollars and jail time, and I am very tired of having to contest these underhanded tactic. The road is what it is, but BLM is trying to make a controversy where there is none.

I am sending you a snippet from an email I sent my attorney here recently. The county informed the BLM that we planned to blade our road which runs from the dam about 2.9 miles south to the point where the pipeline exits the canyon. This road has never been closed even though .8 miles of it is inside the BLM's travel restriction area. San Juan County has never asked for a title V right of way on this road.

When you and I discussed this road, you mentioned that your office had issued a decision but that you knew you had not gone far enough and that you would be revisiting it. We have a group of BLMers here in San Juan County who go to dinner with the Great Old Broads and SUWA and who have bought into their agenda. They assert that the road is a Title V right of way, but their own state people have confirmed that there is no title V ROW road in Recapture. It is beyond anathema to deal with them and their games.

Here are some clips from the original pipeline right of way that address this road.

This clip is found under III. Site Data A. Lands Status, second paragraph:



Here is that clip Under II. Special Stipulations, B. Construction Stipulations, 2:



This is from the original R/W U-42412 application a copy of which is attached.

We met with State Director Ed Roberson and some of his staff and they confirmed that there is NOT a Title V road in Recapture, yet Don Hoffheinz the Monticello Field office director recently denied the county maintenance rights saying that it was not in keeping with the "Title V Pipeline Maintenance Road." There is no such thing as a pipeline maintenance road. There is only a County road and a separate pipeline. The Ditch Company does not drive on their pipeline ROW, they drive on the existing county road.

I want to come with our County's hired attorney, John Howard, to DC and go over the entire case file with you. I am confident that the BLM will only continue to cover themselves on this, but I want it resolved. I will communicate this same information to Brian Steed, deputy BLM Director. It may be that Recapture is low on the priority list, but it is anything but trivial and has been used to justify the bears ears monument, to justify the killing of Dr. Redd, and the prosecution of 7 Blanding men. The narrative is being driven by SUWA and company, and it is total fabrication and cover-up.

Can you meet with me? Can we talk on the phone? Give me a date and time and I will be in your office with all the documentation. This is not even a controversial case, other than we have BLM employees who have made it their mission to torment the County and our residents. The county has spent a lot of money on attorneys so far and we are just trying to get BLM to either close the road, or acknowledge that it is open. Secretary Zinke's order did nothing to confirm or deny the county's road, it simply left the area closed to off-road traffic. Since this a road, traffic on this road is permitted, unless BLM says it is not the County's road, thus making the travel "off-road". A laws suit will likely run another million dollars, and simply because of stubborn BLM employees set on perpetuating a lie.

Thank you in advance for taking the time to respond.

Sincerely,

Phil Lyman, cell - (b) (6)

San Juan County Commissioner

Terms and Conditions of Right-of-Way Grant

Serial No. U-42412

I. General Stipulations:

1. The applicant by accepting this right-of-way grant, agrees and consents to be bound by all terms and conditions of 43 CFR - 2800 and subject to all valid rights existing on the date of grant.
2. "The Company (Holder) agrees not to exclude any person from participating in employment or procurement activity connected with this grant on the grounds of race, creed, color, national origin or sex, and to ensure against such exclusions, the Company (Holder) further agrees to develop and submit to the proper reviewing official specific goals and timetables with respect to minority and female participation in employment and procurement activity connected with this grant. The company (Holder) will take affirmative action to utilize business enterprises owned and controlled by minorities or women in its procurement practices connected with this grant. Affirmative action will be taken by the Company (Holder) to assure all minorities or women applicants full consideration of all employment opportunities connected with this grant. The Company (Holder) also agrees to post in conspicuous places on its premise which are available to contractors, subcontractors, employees and other interested individuals, notices which set forth equal opportunity terms; and to notify interested individuals, such as bidders, contractors, purchasers and labor unions or representatives of workers with whom it has collective bargaining agreements, of the Company's equal opportunity obligations."
3. This right-of-way may be renewed. If renewed, the right-of-way will be subject to regulations existing at the time of renewal and such other terms and conditions deemed necessary to protect the public interest.
4. The Holder shall comply with the applicable Federal and state laws and regulations concerning the use of pesticides (i.e., insecticides, herbicides, fungicides, rodenticides, and other similar substances) in all activities/operations under this grant. The Holder shall obtain from the Authorized Officer approval of a written plan prior to the use of such substances. The plan must provide the type and quality of material to be used; the pest, insect, fungus, etc., to be controlled; the method of application; the location for storage and disposal of containers; and other information that the Authorized Officer may require. The plan should be submitted no later than December 1 of any calendar year that covers the proposed activities for the next fiscal year (i.e., December 1, 1979, deadline for a fiscal year 1981 action). Emergency use of pesticides may occur. The use of substances on or near the right-of-way shall be in accordance with the approved plan. A pesticide shall not be used if the Secretary of the Interior has prohibited its use. A pesticide shall be used only in accordance with its registered uses and within other limitations if the Secretary has imposed limitations. Pesticides shall not be permanently stored on public lands authorized for use under this grant.

II. Special StipulationsA. Pre-Construction Stipulations

1. A Section 404 Permit approved by the U.S. Army Corps of Engineers is required prior to construction.

2. Approval of all plans and specifications of the project by the State of Utah, Division of Water Rights, is required prior to construction.

3. A contract will be awarded by San Juan Water Conservancy District for mitigation of impacts to cultural resource sites identified in the inventory for the project area (dam, reservoir and highway realignment), "Intensive Archaeological Inventory of Sites in Recapture Wash North of Blanding, Southeastern Utah" by Asa S. Nielson.

This contract and the archaeological contractor will be approved by BLM, the Utah State Historic Preservation officer and the Advisory Council on Historic Preservation (USHPO and ACHP).

4. Upon completion of archaeological mitigation work on each site, construction work may commence thereon without awaiting for completion of the total archaeological work required by the contract. All persons in the area who are associated with the project will be informed by the holder that they will be subject to prosecution for collecting artifacts. Any artifacts found in the right-of-way are the property of the federal government and will be deposited with the Edge of the Cedars Museum in Blanding. If human burials are exposed during construction, work in that spot will stop immediately and the BLM's San Juan Resource Area Office will be contacted. (801) 587-2201.

5. Copies of agreements with involved mining claimants which release the holder and BLM from liability for claims affected by the project must be furnished to BLM prior to construction.

6. A pre-construction conference will be held prior to project work to review the general and site specific stipulations. Those having key roles in the construction will be present. Before construction may commence, the holder will designate a representative for field operations. He will be the sole field representative of the holder and the holder's contractors in dealings with the authorized officer.

7. Prior to construction the holder will contact the San Juan County Road Department (Lynn Adams, (801) 587-2249) to assure county concerns are considered during construction and rehabilitation activities along county roads.
8. All survey monuments, witness corners, reference monuments and bearing trees must be protected against destruction if possible. Any damaged or obliterated markers must be re-established and officially approved by Cadastral Survey at the expense of the holder.
9. The holder will provide any contractor(s) for this project a copy of these stipulations and be responsible for assuring contractor's compliance with the stipulations.
10. The holder will notify the authorized officer (San Juan Resource Area (801) 587-2201) four working days prior to commencing construction.

B. Construction Stipulations

1. Activity will be strictly limited to within the boundaries of the right-of-way. If materials are required from public lands outside the right-of-way, the holder will apply under applicable regulations for such materials. The right-of-way is defined as the dam site in T. 36 S., R. 22 E., Section 13:NE $\frac{1}{4}$ and T. 36 S., R. 23 E., Section 18:NW $\frac{1}{4}$; plus the area below the 6,080 elevation line contiguous to the upstream side of the dam and lying northwesterly up Recapture Creek in T. 36 S., R. 22 E., Sections 12 and 13; and T. 36 S., R. 23 E., Sections 7 and 18.
2. Existing access to the right-of-way will be used and no new access will be constructed without approval of the authorized officer. Blading of existing access must also be approved by the authorized officer, or if on county roads, approved by San Juan County.
3. Existing fence which is crossed by the right-of-way will be braced per enclosed specifications (enclosure number 1) and tied off before cutting, to prevent slacking of the wire. The opening will be constantly protected between June 1 and December 31 to insure against passage of livestock during construction and until completion of the new fence along the highway right-of-way which will replace the present fence.
4. Trash and other waste material will not be allowed to accumulate along the right-of-way. These materials will be contained, collected and removed daily from public lands.
5. Portable chemical toilets will be provided as needed in the construction area.
6. Equipment oil will not be drained onto the ground, but will be collected and removed from public lands.

7. All trees, brush and debris will be removed from the area to be inundated. This removal will be a selective grubbing action, and will not consist of blading or similar actions which would remove all vegetation.

C. Post-Construction Stipulations

1. The downstream side of the dam site not covered by rip-rap will be covered with six inches of topsoil, taken from within the right-of-way, and reseeded with the seed prescription identified in Stipulation #2 below. (Rip rap on the upstream side of the dam is to extend to the edge of the pavement.)

2. Disturbed areas will be seeded using the following seed prescription:

2 lbs/acre	Fairway crested wheatgrass	<u>Agropyron cristatum</u>
2 lbs/acre	Indian ricegrass	<u>Oryzopsis hymenoides</u>
2 lbs/acre	Antelope bitterbrush	<u>Purshia tridentata</u>
1 lb/acre	Fourwing saltbush	<u>Atriplex canescens</u>
1 lb/acre	Noman alfalfa	<u>Medicago sativa</u>

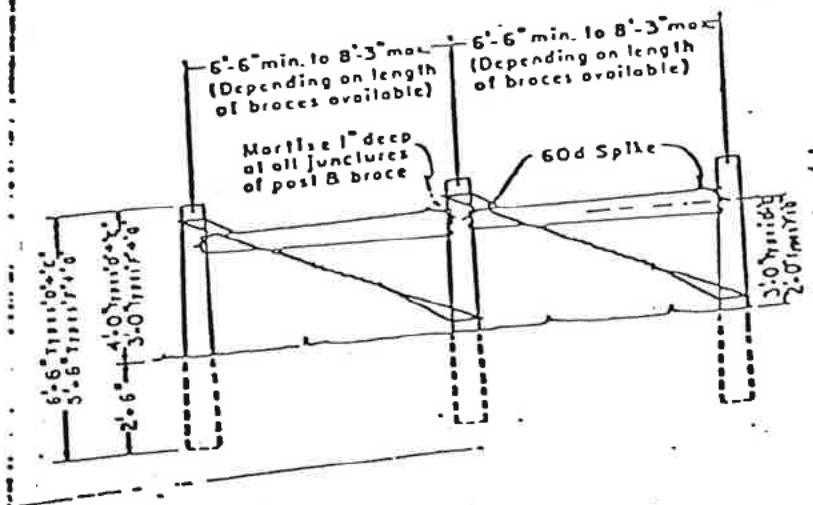
All seed used will meet all the requirements of the Federal Seed Act (7 U.S.C., Sec. 1551 - 1610, inclusive); Federal Specifications JJJ-S-181 and the Seed Laws and Noxious Weed Law of the State of Utah. Seed will be drilled to a depth of one-half inch, using a drill with two boxes for various seed sizes. Seeding will be done during the restoration phase and immediately following construction.

On areas too steep for drilling, broadcast seeding at a rate double that for drilling, will be permitted. Seed cover will be assured by harrowing, dragging a chain, or a similar method.

3. When all development and rehabilitation have been completed, a joint compliance check of the right-of-way will be made by the holder and the authorized officer or his designated representative to determine compliance with the terms and conditions of this grant. The holder will perform at his own expense any required modifications or additional reclamation work needed to comply with the terms of this grant.
4. The holder accepts all liability for recreational uses which may be made of the site, and will be responsible to keep the area clean and free of trash and debris created as the result of such use.

BRACING

PANEL AT GATES & CATTLEGUARDS



Enclosure #1



Figure 5. View looking north from Highway 163 into Recapture Creek



Figure 6. View from Highway 163 of the southeastern portion of the proposed reservoir site.



Figure 7. View looking north into Recapture Creek



Figure 8.



Figure 3. Location Notice for the MJB #1 Claim

APPRAISAL OF LABOR AND IMPROVEMENTS

State of UTAH
County of SAN JUAN

being First duly sworn, licensed and legal of BLANDING, UTAH

That for the service rendered ending at 12 o'clock M. on Sept. 1, 1980 there was done or later \$100 worth of labor and/or improvements upon or for each of the following claims

estate in SAN JUAN County, Utah, said claims being legally held and duly recorded in the office of the County Recorder for SAN JUAN County, UTAH at heretofore set out.

Name of Claim	MJB Serial No.	NOTICE OF LOCATION	
		Book	Page
MJB # 1	200 115967	593	877

That said work consisted of Development work & mining.

That said work was done and improvements made to the interest and record of Richard J. Henshaw the owner of said claim and was done between the dates of Sept. 1, 1979 and Aug. 31, 1980 and was done for the purpose of building and claims for the mineral interest ending Sept. 1, 1980 at BLANDING, UT Subscribed and sworn to before me this 11th day of August 19 80 by Richard J. Henshaw and James H. Henshaw before me at BLANDING, UTAH the Commissioner August 11, 1980

Figure 4. Proof of Labor for the MJB #1 Claim

I. Description of the Proposed Lands Actions

A. Right-of-way Application Number U-42412

On February 15, 1979, San Juan Water Conservancy District, Blanding, Utah 84511, filed Right-of-way Application Number U-42412, requesting a site for construction of a dam and reservoir. The proposal, known as the Recapture Dam, is to construct a dam across Recapture Creek in T. 36 S., R. 23 E., Section 18: NW $\frac{1}{4}$. This dam would create a reservoir of water covering, at high water line of 6,080 feet approximately 270 acres in T. 36 S., R. 23 E., Sections 7 and 18; T. 36 S., R. 22 E., Sections 12 and 13. The Recapture project is part of a plan known as the Blanding Project, for storage and use of water in San Juan County, Utah.

The application was filed per authority of Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761) and regulations of 43 CFR Part 2800.

B. Right-of-way Application Number U-45937

On May 15, 1980, Utah Department of Transportation, Salt Lake City, Utah 84114, filed Right-of-way Application Number U-45937, requesting use of land for construction of a public highway. The highway would be a re-alignment of the present Highway U.S.-163, with the right-of-way proposed to be 600 feet wide (300 feet on each side of the centerline) and 3.034 miles in length. BLM administered public lands over which the highway would pass are: T. 36 S., R. 22 E., Section 13; T. 36 S., R. 23 E., Sections 6, 7, and 18 for a total of 220.63 acres. The highway would pass over the top of the dam proposed for construction in T. 36 S., R. 23 E., Section 18, per right-of-way application number U-42412.

The application was filed per authority of the Federal Aid Highways Act of August 27, 1958 (72 Stat. 916 Title 23, U.S.C. Section 317) and regulations of 43 CFR Part 2800.

Alternatives to the proposed actions are discussed on pages 5 and 6 of the EA prepared for the proposals. These were not considered feasible and will not be considered further.

II. General Information and Background Data

A. Area Analysis

The site of the proposed actions is located approximately three air miles northeast of the town of Blanding (population approximately 3,000), in San Juan County, Utah (population approximately 12,000).

Feasibility of constructing the proposed projects has been studied since the mid 1960's. Development of the water storage facilities would be a continuation of historic efforts by residents of the county to develop and use available water for irrigation and municipal purposes. Re-alignment of this portion of Highway U.S.-163 to eliminate dangerous curves (which have been the location of about three times as many accidents as the average for similar road traffic) is also of special concern to county residents, as well as the Utah State government. After numerous studies of alternative sites, the proposed location was selected and in 1978 the applicants entered into a cooperative agreement to pursue construction of the projects.

Highway U.S.-163 is the major artery of travel from north to south through San Juan County, Utah.

Most federal lands in the area are used for grazing purposes, with lesser use for hunting, sightseeing, archaeological research and mineral exploration and development. Dominant use on private lands is grazing and agriculture, mostly dryland, with irrigated crops on smaller acreages.

The major economic contributors are oil and gas exploration and development and the mining industry. Agricultural products contribute to the area economy on a smaller scale than minerals. Recreational activities are providing an increasing contribution to the economy.

B. Planning Recommendations and Other Considerations

The area of the projects is classified by BLM for multiple use management by Multiple Use Classification Number U-8131, dated September 24, 1970.

BLM's management framework plan for Montezuma Planning Unit 06-09, in which unit the proposed projects are located, management decisions L-3, W-2, W-3, and W-11 support granting a right-of-way for the dam-reservoir project.

San Juan County's zoning for the general area is agricultural, with controlled areas---wherein uses other than agriculture would be closely regulated---"1000 feet from the centerline of all highways".

The proposed actions are strongly supported by local governments and residents, and would have no adverse effect on any known federal, state or local programs for the area.

III. Site Data

A. Lands Status

Both surface and mineral estates of the public lands to be occupied by the proposed projects are federally owned.

The portions of master title plats for T. 36 S., R. 22 E. and T. 36 S., R. 23 E. located in addenda of this report show locations of rights-of-way for power lines and the present Highway U.S.-163, and small tract leases, in relation to the locations of proposed projects.

Locations of county roads in relation to the proposed projects is not shown on the plats, since the roads were built per authority of repealed R.S. 2477. The location of county roads in the area are shown on the portion of topographic map depicting the dam and reservoir site (in addenda).

Utah Power and Light Company has a valid right-of-way (number U-054148) for a powerline to supply power to the sawmill operation in T. 36 S., R. 22 E., Section 12: SE $\frac{1}{4}$ (Small Tract Leases U-037939 through U-037946, which leases expire July 31, 1981). However, the sawmill has not been operated for at least five years, and the powerline constructed per authority of right-of-way Number U-054148 has been removed. BLM will not renew the leases and terms of the leases require removal of the facilities and restoration of the area.

The entire project area is included in oil and gas leases which are "open end" (without special stipulations attached thereto).

There is no uranium mining activity in the immediate vicinity of the applicaiton sites. However, the area is blanketed with mining claims. (Refer to minerals report prepared by Jeff Williams, Moab District Geologist.)

Mining activity for bentonite has occurred on bentonite claims located just north of the sawmill facilities. Results received from tests made on content of the materials contained on the claims show the viscosity of the material is not sufficient for the claims to be valid locatable claims for bentonite.

The project sites are within the Bulldog Grazing Allotment, with Guymon Ranches authorized to graze cattle therein between June 1 through December 31. The existing fence on the north side of the present Highway U.S.-163 in the project area divides the grazing allotment into north and south portions. Fencing of the proposed highway re-alignment would provide similar division of the allotment.

B. Location and Identification

The project locations were identified by topography, by relationships to existing facilities and, and in recent examinations, by reference to stakes placed by the applicants.

C. Access

Both legal and physical access to the sites is provided by the present U.S.-163.

D. Physical Description and Environmental Considerations

The environmental assessment prepared for the proposed actions describes the physical characteristics of the subject land, the environmental impacts anticipated as a result of the proposed actions and the alternatives to the proposed actions. The description of the existing environment is contained on pages 7 through 25 of the environmental assessment.

E. Ownership and Land Use on Adjoining Lands

The attached land ownership map (Monticello W) shows ownership of lands adjoining the proposed project sites.

Uses of adjoining lands include grazing, agriculture, casual recreational pursuits, archaeological research, and minerals exploration, all in similar manners and degrees as on the application lands.

F. Land Use Capabilities of the Subject Lands

1. Historical Uses

Since the early 1900's, uses of the lands proposed for locations of the projects have included grazing (the reservoir site is a part of the old L.C. Ranch of the late 1800's), casual recreation (hunting, hiking, sightseeing, etc.), minerals exploration and development, archaeological research, and in the late 1950's, establishment of a sawmill operation (per authority of small tract leases). The sawmill has not operated for over five years, but facilities are still located on the leases. Rights-of-way for existing roads and power lines were also established.

A cultural resources inventory of the area revealed extensive use of the lands by prehistoric Anasazi between 600 and 1300 AD. Evidence of this use includes lithic scatters, petroglyphs, granaries, rock shelters and other structures. The inventory report contains more detailed information about these findings, and proposed mitigation of impacts to the sites.

2. Present Uses

With the exception of the sawmill, present uses of the lands are approximately the same as those identified in historic uses.

A brush and barbed wire fence crosses the proposed highway re-alignment from east to west in T. 36 S., R. 23 E., Section 7: N₂. There is no record of its being authorized but may have been constructed to control livestock on private lands in Section 7.

3. Potential Uses

With little change, potential uses of the lands could include present uses. With removal of the inactive sawmill facilities, the proposed reservoir of water could be established. In addition to providing water for irrigation of additional acreages of crops and a larger supply for municipal use, there could be opportunities for water-based recreational uses, i.e., boating, water skiing, and possibly fishing. The applicant has not applied to construct developments for such uses, but possibilities have been discussed and other state or local government entities may wish to construct such facilities in the future.

Use of the lands identified as needed for re-alignment of Highway U.S.-163 in the area would provide a safer travel route for local people as well as those passing through.

IV. Land Use Analysis

Granting the rights-of-way for these Recapture projects would provide for uses compatible with existing uses, would be consistent with multiple use management and would implement planning decisions for erosion control.

Completing recommended testing and excavation of a portion of the archaeological sites located in the areas to be disturbed by the projects would add to present research knowledge and alleviate possible loss of information caused by destruction of the sites.

Local government entities and residents have worked for many years to bring the proposed actions about. Local opinion seems to be unanimous that the projects are needed and desirable. No adverse comments were received on the proposals during the review period or at any other time.

The dam-reservoir would provide storage for additional water to irrigate crops in the Blanding area, and increase the supply of municipal water for the growing town of Blanding. Also, possible future recreation developments around the reservoir would be enjoyed by county residents and visitors to the area.

The highway re-alignment would provide a safer route of travel for all vehicular traffic through the area.

V. Recommendations and Rationale

Recommendations

1. It is recommended, per authority of Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761) and regulations of 43 CFR Part 2800, that right-of-way number U-42412 be granted as applied for by San Juan Water Conservancy District, with the attached stipulations to be made a part of the grant. The grant should be for a 30-year period, to be renewable upon expiration.

2. It is further recommended, per authority of the Federal Aid Highways Act of August 27, 1958 (72 Stat 916 Title 23, U.S.C. Section 317) and regulations of 43 CFR Part 2800, that right-of-way number U-45937 be granted as applied for by Utah Department of Transportation, with the attached stipulations to be made a part of the grant. The grant should be for a 30-year period, to be renewable upon expiration.

Rationale

The proposed projects would be compatible with present uses, BLM planning, federal, state, and local programs and local zoning.

Benefits would be a safer route of travel on a segment of Highway U.S.-163 and the availability of more water for crop irrigation and municipal use by the town of Blanding.

VI. Addenda

Land Ownership Map (Monticello W)

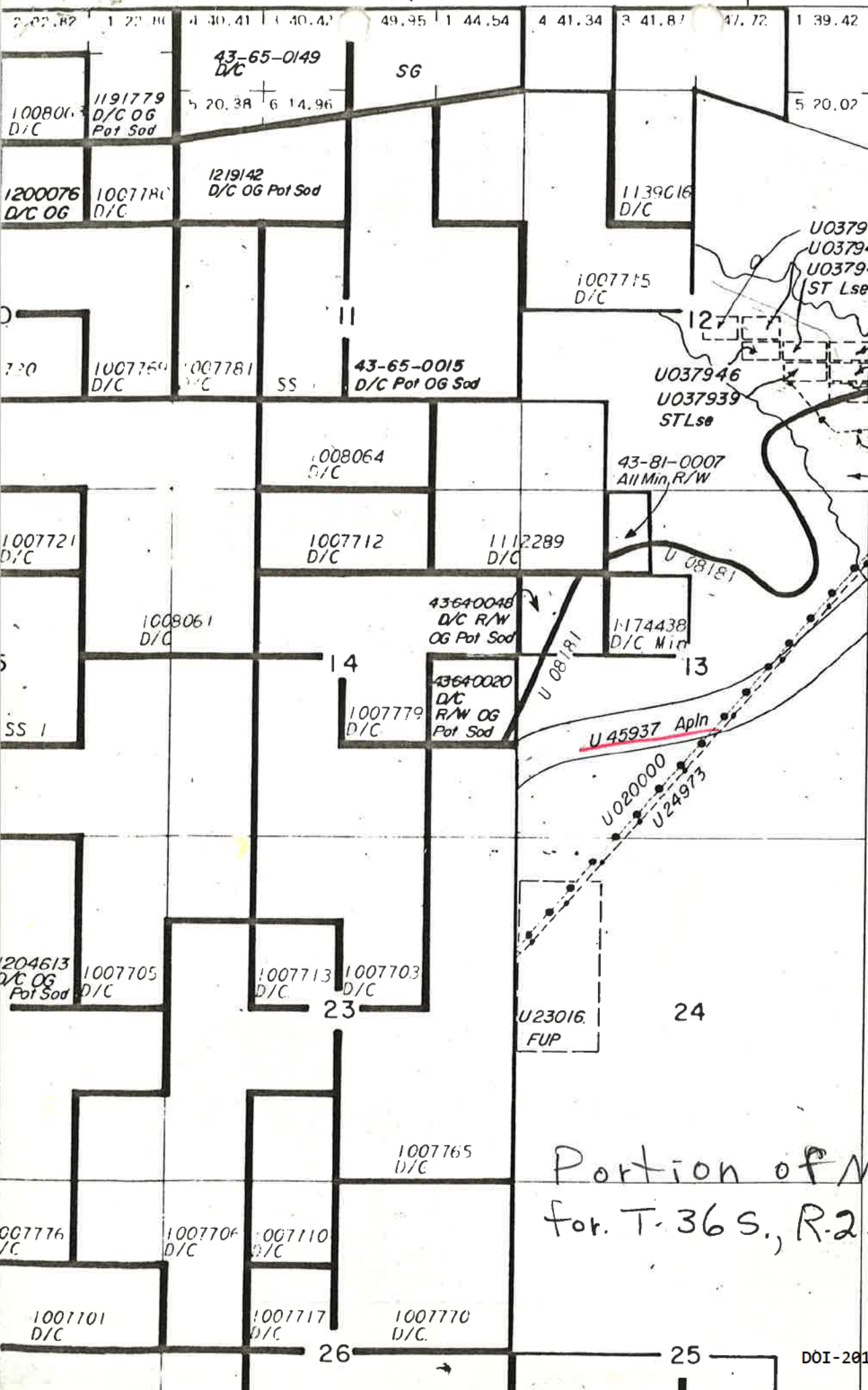
Photos

Portion of master title plat, T. 36 S., R. 22 E.

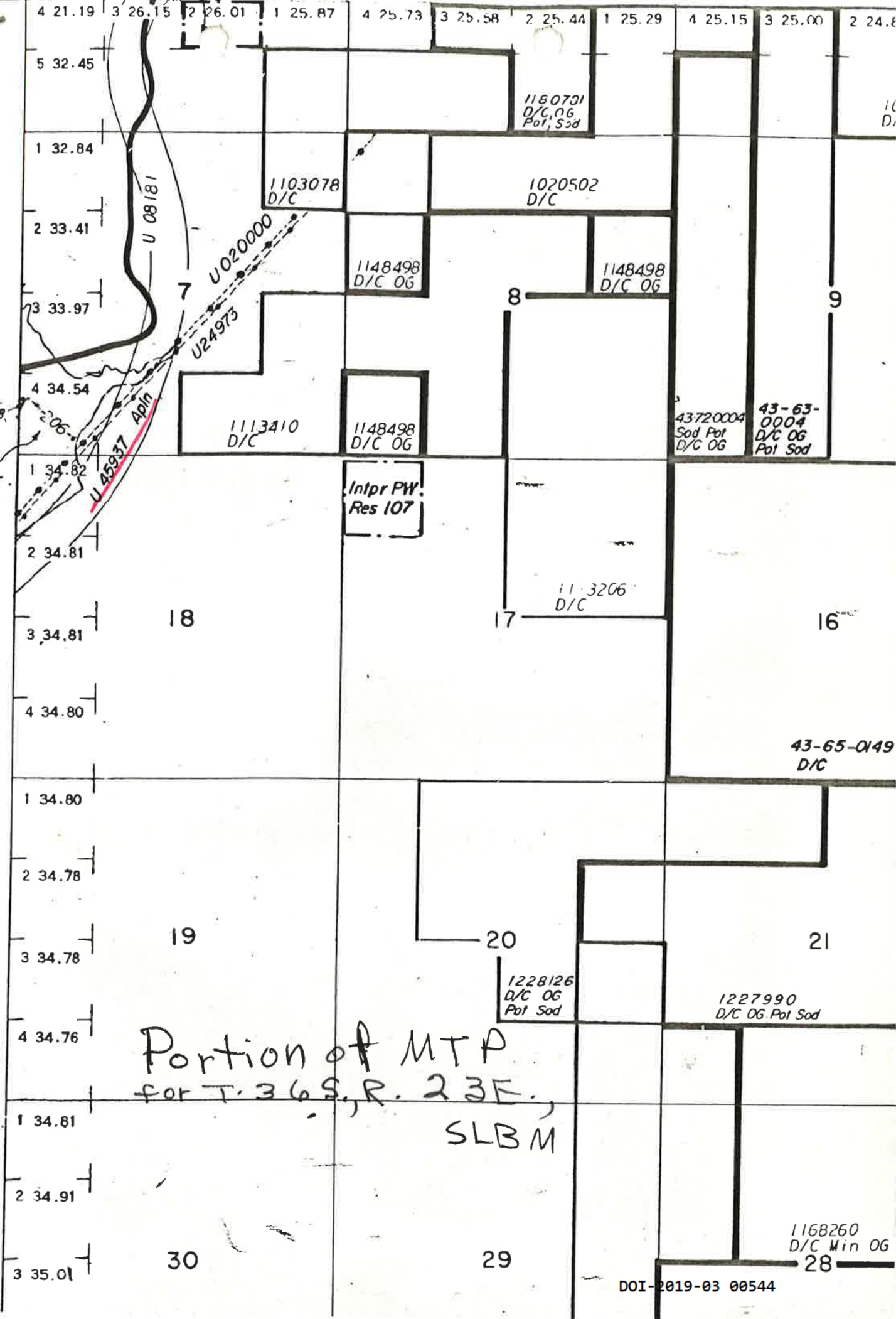
Portion of master title plat, T. 36 S., R. 23 E.

Stipulations for right-of-way #U-42412

Stipulations for right-of-way #U-45937

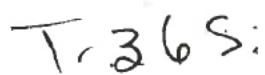


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Portion of MTP
for T. 36 S., R. 23 E.,
SLBM



Locations of county roads in relation to the proposed projects is not shown on the plats, since the roads were built per authority of repealed R.S. 2477. The location of county roads in the area are shown on the portion of topographic map depicting the dam and reservoir site (in addenda).

DOI-2019-03 00546

2. Existing access to the right-of-way will be used and no new access will be constructed without approval of the authorized officer. Blading of existing access must also be approved by the authorized officer, or if on county roads, approved by San Juan County.

DOI-2019-03 00547